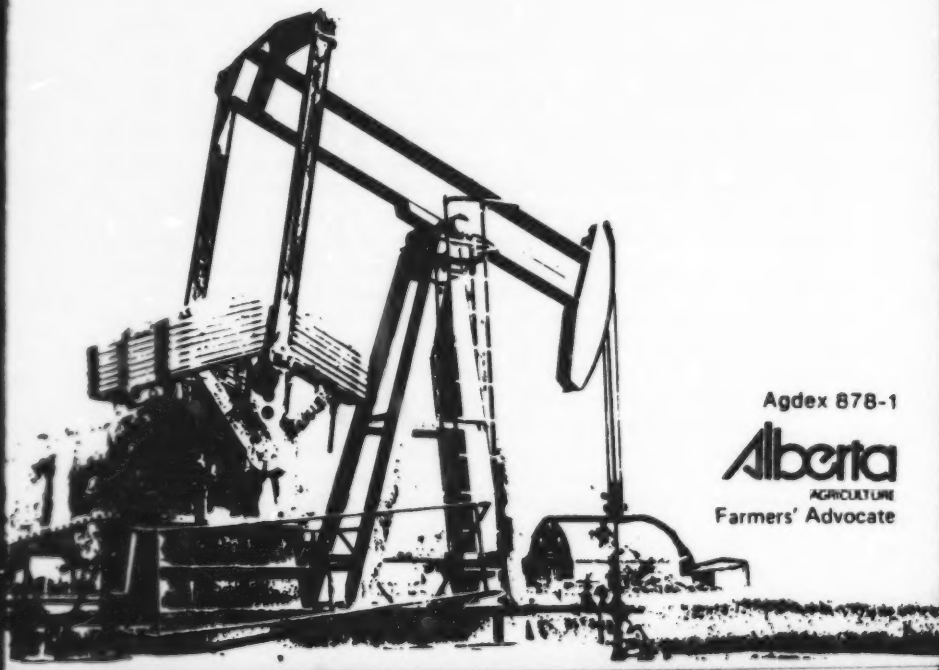


Negotiating Surface Rights



Agdex 878-1

Alberta
AGRICULTURE
Farmers' Advocate



NEGOTIATING SURFACE RIGHTS

NEGOTIATING A SURFACE LEASE

Ownership of land does not mean that the landowner has exclusive control of his property. Through special acts governments may permit others to acquire use of part of an individual's land. This is based on the assumption that the acquiring of the use of such land is in the interest of the general public. Under common law the mineral owner has the right to enter upon the land held by the surface owner to work and remove the minerals. The surface owner's Certificate of Title is expressly made subject to the rights of the mineral owner. Pipelines and power lines are allowed on your land under statutory provisions.

The Surface Rights Act comes into effect when the surface owner or occupant and the company are unable or unwilling to reach a private agreement regarding the use of the land concerned.

One cannot say or predetermine whether compensation will be greater or less on a private agreement as versus a board order. Cases have arisen where in private negotiations, factors have been acknowledged and compensated for, where in board orders this had not been a factor taken into account. In private negotiations anything is possible if agreed to by both parties, where before the Surface Rights Board, you are governed by The Surface Rights Act.

The purpose of this pamphlet is to assist landowners and occupants to effectively negotiate a private agreement, as well as understand the process involved in appearing before the Surface Rights Board and, in a limited way, the implications of The Surface Rights Act.

Private Negotiations

The land agent, either an employee of the company or an independent land agent, approaches the landowners and offers a surface lease. By this time the company has either conducted a survey of the area of interest or informed the owner that a survey will take place. Surveyors have the right to come on the land to conduct a survey after they have made a reasonable attempt to give notice thereof to the landowner or occupant. Any damages done during the course of the survey must be paid for by the company authorizing the survey.

The surface lease for a well site plus roadway should have attached to it a map of survey outlining the area the company wishes to obtain and also a completed agreement outlining the compensation it is prepared to pay. Under the Land Agents Licensing Act, this document is to be left in the landowner's possession for a clear period of 48 hours (not including Sundays or legal holidays) before he can resume negotiations. This does not preclude the landman from obtaining the opinion of the landowner as it pertains to the company's offer nor does it prevent the landowner from waiving the 48-hour condition so that negotiations can begin immediately. Remember the 48-hour waiting period is provided for the landowner's protection and should be used to carefully study the document and the compensation offered.

Well locations are for the most part chosen on the basis of the operator's geological interpretation and the well spacing and target area requirements set out by the Energy Resources Conservation Board (ERCB). The diagram on the back cover illustrates the target areas designated for oil and gas wells in a large portion of the province's agricultural areas. It should be noted, however, that many areas have target areas which vary from those shown on the diagram. These variations are set out in specific spacing orders. Any questions respecting well spacing and target areas should be directed to the ERCB at 297-8311.

If the well site and access road proposed by the operator would have too adverse an effect on the land or land use, you should make your concerns

known to the operator and endeavor to negotiate a reasonable and fair alternative. All of your concerns should be agreed upon prior to signing a private agreement. In the majority of cases the landowner and operator should be able to reach a mutually acceptable agreement. If not, you should contact the ERCB and advise them of the outstanding concerns.

The ERCB has broad jurisdiction and will consider objections (if private negotiations fail) in regard to the well site location, route of the access road and matters relating to the construction of the road. The board is also responsible for safety, proper containment of all drilling fluids and well effluents, noise control and odors due to oil and gas facilities.

If an agreement respecting the well site location and access road is reached the operator will apply to the ERCB for a well licence. If a licence is issued the operator can commence its operations if a surface lease has been signed. If a lease was not signed the operator will apply to the Surface Rights Board for a Right of Entry Order.

Topsoil — Reclamation, Alberta Environment

Prior to construction or site preparation, inform yourself of soil preservation practices of the company and attempt to come to some agreement as to the method to be used to preserve as much topsoil as possible on a pipeline, power line or well site area.

Prior to or during construction or site preparation of a well site, pipeline or power line, if there is any indication that proper construction methods are not being followed, contact should be made with Alberta Environment. In instances where a lease is being abandoned, the company must obtain a Reclamation Certificate from Alberta Environment before they can surrender or terminate their surface lease or rights-of-entry order (annual payment, if applicable, continues until this is done). If you encounter problems in regard to any of the above, or if you wish further information, contact Alberta Environment, Land

Conservation and Reclamation Council, in Edmonton at 427-6212.

Power Lines into Well Sites — Underground versus Above Ground

During the negotiating stage the landowner is in a position to negotiate whether power lines should be above or below ground, regardless of when they are to be installed. Technology is such that a standard electrical service motor can be installed underground with costs comparable to above ground. As the oil company takes the Surface Lease with the roadway they install above ground power lines on the roadway. By adding the condition to the agreement that prohibits them from installing above ground electricity, you can overcome this problem. This should be done when the original agreement is signed. If the company wishes to bring power in from an alternate direction then this would be negotiated when the easement is taken (assuming it were to come across your field and not follow the well site roadway). You are being paid for loss of use on the roadway and the adverse effect associated with it, however knowing in many cases you can farm over the roadway is reflected in your acceptance of the compensation agreement. The placement of poles on the roadway can seriously inconvenience your farming operation. Had this been known at the time of negotiations, it could have been reflected in the annual compensation. If it is not known, it is not requested until it is too late. Therefore attention should be given at the time of negotiation to resolve this concern. However each case should be decided on its own merit and particular set of circumstances.

Surface Lease

This is a document used to legally secure the interest a company takes in the surface of the land for the purpose of extracting minerals. For reasons of expediency companies have prepared the lease document. This differs from the general practice where the vendor or lessor being the person giving the interest is responsible for drawing up documents. Most leases are of a general nature. It

is the responsibility of the landowner to examine and negotiate in or out specific clauses which apply to his particular set of circumstances. Examples being types of road, road ditches, handling of topsoil, herbicide spray, and powerlines. Landowners are not obliged to use the lease offered by the company, however if you do, it can be modified to suit your specific set of circumstances. No one agreement will suffice for all. However in an attempt to address the main concerns the office of the Farmers' Advocate in conjunction with the oil industry and the farming community have devised a new model agreement called the 'Alberta Surface Lease Agreement'. This agreement takes into account the more common concerns and problems arising out of the leasing agreement and attempts to deal with them thoroughly, keeping in mind the concerns and needs of the oil industry and the landowner. As indicated this lease is a model, however it can be used "as is" or clauses can be added or deleted to meet the needs of both parties. The lease is an important document and should be studied closely prior to signing, as it sets out the terms and conditions which will govern all future transactions and deal with any problems that may arise from the taking. For this reason it is critical that the lease be as comprehensive as possible and tailored to deal with your specific set of circumstances. Copies of this agreement are available through the office of the Farmers' Advocate or your District Agriculturist office.

Prior to signing any agreement it is imperative that a proper plan of survey be attached to form part of the surface lease. This is to ensure that you are exactly aware of the area to be leased. The specific area contained in the well site and roadway (demised premise) is defined to be separate from the balance of the quarter (said lands). The company should not be allowed on your property other than to survey until the lease money has been paid, or arrangements made for payment that you find acceptable.

HOW TO DETERMINE COMPENSATION

Entry Fee

Any operator who proposes to exercise a right of entry on land other than land owned by the Crown, either by a board order issued by the Surface Rights Board or through a privately negotiated agreement, whether it be for a well site, pipeline or power line, shall pay an entry fee in an amount equal to the lesser of \$5,000.00 or \$500.00 per acre granted to the operator, or a proportionate amount, not to be less than \$250.00, where the land granted to the operator is less than one-half acre. This shall be done prior to exercising any private agreement or board order to gain access to the land.

If the operator needs a 4.25-acre well site, he would pay the compensation payable in respect of the rights of entry as outlined below, plus 4.25 acres x \$500.00 = \$2,125.00 as an entry fee. The maximum of \$5,000.00 would usually only be obtained on a large site of 10 acres or more. If less than one acre in total is taken, then it is the fraction of one acre x \$500.00, not to be less than \$250.00. This does not apply to land used by gas co-ops, rural electrification associations, or an operator of a local distribution system.

The following points should be used when determining compensation payable:

1. Value of Interest Taken

In most cases this is determined by the amount the land granted to the company might be expected to realize, if sold on the open market by a willing seller to a willing buyer on the date the right of entry order was issued, or the time frame when the private agreement was entered into. This is also based on the highest approved use of the land (agricultural or industrial). The per acre value would be determined by dividing the value of the titled unit by the number of acres required. However, the practice has been to use the value to the owner.

Such a value has to be determined and may or may not be the expected selling price as is determined by other sales on the open market.

One should not place too much emphasis on privately negotiated contracts of other landowners with other companies, since they pertain to what was paid for a particular well site and access road and one does not know the circumstances under which such amounts were derived. The following sums up the Surface Rights Board's reasoning for determining value to the owner which may or may not be market value.

"The effect of the granting of right of entry to the operator was to superimpose a second user right, which is an exclusive and dominant right (s. 16(1)(a)) for the term of the order, on the respondent landowner's existing right, resulting in damages of both tangible and intangible nature to the bundle of rights entrenched in the ownership and right of use and enjoyment of the said land. Notwithstanding any inherent right of the operator to occupy such part of the surface as may be necessary to search for and evaluate its mineral interest underlying the said land, the exercise of that right has created an interference and a disturbance to the landowner's vested right of use and enjoyment of the surface of the land. It is this disturbance to the vested interest of the respondent landowner that attracts an award of compensation, together with any incidental losses and damages arising from that disturbance to the owner's use and enjoyment of the surface in his farming operations.

The operator applied for and was granted right of entry by the board, pursuant to statutory authority, to occupy and use certain land for its operations, and at the date of that order against the said land and the respondent landowner, the likely term of the order was uncertain. Its effect at that date was to grant to the operator the right, title and interest to that certain land for such purposes and such duration as may from time to time be necessary to carry out and complete its proposed operations."

2. Nuisance, Inconvenience and Noise

This expression is used to distinguish those nuisances and inconveniences which are peculiar to the first year from those which recur annually throughout the life of a well. The latter are considered under point 4, as Adverse Effect.

No doubt, a landowner will have a certain amount of inconvenience in dealing with the company's representatives and surveyors. He may be required to prepare documentation to present to them, to make phone calls and seek advice from various authorities and will have other related involvements which he otherwise would not have been forced to deal with had the company not approached him for permission to come on the land. The landman is being paid to negotiate with the landowner; the landowner should be paid to negotiate with him. Therefore, a log of all time spent, phone calls made, and expenses incurred should be recorded.

3. Loss of use of the Land

The landowner is being deprived of the normal use of the site for as long as the surface lease remains in effect. Compensation for this land must be on an annual basis. Compensation should approximate the value of the gross annual production reasonably expected from the area lost, since the major farm operating expenses relating to capital, labor, equipment, overhead, seed, fertilizer and herbicides are virtually unaffected by the loss of a small acreage of land.

One can use an average of the past five years' yields and prices, or today's street price, whichever is greater, to determine this figure. Assuming that in the first year production of wheat is 40 bushels per acre, if the well site and access road were four acres, the loss would be 4 x 40 or 160 bushels. At \$4.50 a bushel the total annual loss on well site and access road would be \$720.00.

Because you are asked to agree on losses for the next five years, you should also include consideration of the impact of inflation on costs of equipment, crops and operating expenses.

4. Adverse Effect

One must consider the adverse effect of the site on the remaining land, i.e. the nuisance and inconvenience created thereby to the farming operation on the adjoining land. Take into consideration the cost of change in farming pattern on the adjoining land, and the extra surveillance required as access to your property is now easier owing to the construction of an access road.

There is no doubt that operating machinery around well sites, power lines or any of industry's above-ground structures is an inconvenience and nuisance to the farming operation in both cultivating and harvesting operations. Constant turning of corners on all field operations causes overlapping, extra strain on machinery, undesirable compaction and loss of seed and grain as well as additional field and labor costs.

Again, consideration of an inflation factor should be given, as you will have to abide by this amount for the next five years.

5. Damage to the Land in the Area Granted

This is best summed up by the Surface Rights Board in a recent decision. Of course the concept is valid on Board Orders as well as Private Agreements.

"The Board is satisfied from the evidence and inspection as to the nature of the Operator's operations conducted on the area granted to it by the Order, and from its own knowledge and experience in dealing with surface rights matters, that upon completion of the Operator's surface operations there will inevitably be certain "hidden" soil damages which will persist and result in residual production losses for an indefinite period of time. In the Board's opinion will include all or some of the following: compaction, contamination of soil

materials, imbalance of mineral; organic matter content, changes in pH factor, future subsidence, alteration of land contours, changes in texture, structures, tilth, induced germination of dormant weed seeds."

This amount, if agreed to, will vary with each well site and pipeline depending on the type of land, and the construction and reclamation procedures used.

6. Any Other Factors Which May be Relevant

The above points are the main factors that should be taken into consideration. Should there be any other points that are relevant they should be included in determining compensation. The above points are recommended for use on pipelines, power lines and well sites.

Area Agreement

The above described points are those that are generally used in private negotiation as well as in deliberations by the Surface Rights Board, often referred to as the mathematical approach. However, another system has developed unique to certain parts of the Province which can best be described as the "area agreement" approach. The basis for settlement takes into account what landowners and companies are privately negotiating in an area. The total is arrived at not through the addition of points as used in the mathematical approach but is based on the willingness of companies to pay a certain amount, and that of landowners to accept it. Where this method is being used landowners are not placed in a position of trying to add up or justify each individual point. The "area agreement" approach works on the concept that it is impossible or very difficult to arrive at a total through the sum of individual points, that it must be looked at as a whole and paid accordingly. It acknowledges that the company and the landowner are in the best position to arrive at a figure that is mutually satisfactory.

ANNUAL COMPENSATION

The sum arrived at from considering the above points makes up the first year of payment. It should be paid immediately, prior to the drilling of the well, or work being done on the land. Loss of use of the land (point 3) and adverse effect (point 4) make up a annual compensation. It usually goes without saying that every year the well site is on the land, crop losses will occur under point 3, and every year inconvenience will occur under point 4. Therefore compensation should include consideration for this inconvenience and loss.

The farmer can have annual compensation reviewed where the Surface Lease or Surface Rights Board Compensation Order provides for it on an annual or other periodic basis with respect to well sites, access roads and battery sites. Annual compensation for above ground structures on pipelines, after January 1, 1977, remains unchanged and when provided for, is eligible for review. As of June 1, 1985 all major transmission lines taken in private agreements, prior to January 1, 1977 are also eligible for annual compensation. Those placed under the authority of the Expropriation Act prior to January 1, 1977 are **not** eligible. Major transmission lines with agreements entered into after January 1, 1977 remain unchanged. Where the right to review is available it can be made at any time after the end of the fourth year, payable for each subsequent five-year period of the term of the Surface Lease or Right-Of-Entry Order. The operator must give notice within 30 days after the fourth anniversary of the date the Surface Lease commences, in writing to the lease holder, that he is entitled to review the annual compensation. Both must be prepared to negotiate. This does not prevent the landowner and company from agreeing to a review at shorter intervals.

If the owner and the operator are able to reach an agreement as to a new rate of annual compensation, either the surface lease is amended to this effect, or the Surface Rights Board is notified of the agreement so that the compensa-

tion order can be amended to show the new rate of annual compensation.

If the owner and the operator cannot agree on a new rate of annual compensation, the owner can apply to the Surface Rights Board in writing to have the board determine a new rental or annual compensation. The board will hold a hearing at which evidence can be received from the owner and the operator and will then determine the annual compensation to be paid by the operator.

If a farmer leases or rents land on which the company proposes to come, consent of both the owner and occupant must be obtained; one by itself is not sufficient. It is up to the two parties to determine how the moneys will be divided. A common practice has been for the lessor to receive the proceeds of entry fee, points 1, 2 and 5, and the lessee points 2 (as both parties negotiated), 3 and 4. However, this is something that must be worked out between the lessor and the lessee (in a valid agricultural lease), except if a board order is granted under The Surface Rights Act, in which case it shall make the division of the awards. On Crown grazing leases, entry fee, points 1 and 5 are not applicable to the lessee (no entry fee or market value) however, points 2, 3 and 4 are.

Not all contracts are of the same design and could contain clauses with which the landowner may not agree. A detailed study of each contract offered before signing is the only protection a landowner or occupant has.

If a farmer signs the contract with the representative of the company, that does not necessarily mean that the contract is binding until duly authorized officers of the company accept the contract and affix the company's corporate seal to it. In most cases this takes a short time; some company representatives have signing authority and carry a seal with them.

Most verbal promises are not binding and many contracts will state very specifically that the company does not acknowledge or honor such commitments. Landowners can ask for and insist on having special clauses added to the contract to accommodate special conditions or special requests.

Once the farmer's signature is on the contract, the content cannot be altered. One should always insist on a copy of the contract at the time of signing. Should this not be possible, the company should sign first and return two signed copies to the farmer for signature, giving him one for his records. If in doubt, consult a lawyer to determine whether a particular lease document is in fact legal and binding.

Land acquisition for strip mining solely for the extraction of minerals comes under the jurisdiction of The Surface Rights Act. Private negotiations should be dealt with in accordance with the foregoing.

Acquisition of land for facilities such as power plants or a tailing pond associated with mines comes under The Expropriation Act. The operation of this Act is explained in the pamphlet, Expropriation in Alberta.

NEGOTIATING FOR RIGHT-OF-WAY AGREEMENTS

After January 1, 1977 pipeline and utility companies also gained right of entry under The Surface Rights Act to lay down and construct pipelines, power lines, and telephone lines.

If the landowner and company cannot agree after serious private negotiations have taken place (see page 2), the landowner will be given the opportunity to express his concerns to the Energy Resources Conservation Board, 640 - 5th Avenue S.W., Calgary, Alberta, telephone 297-8311 or after hours 297-3417 prior to the Energy Resources Conservation Board issuing a permit. The ERCB will take into account the concerns of the landowner, as well as the requirements of the company in making their decision.

The granting of a right-of-way agreement or an easement means conveyance of limited, specified rights: the grantor remains the owner and retains all rights not yielded to the grantee. These agreements or easements are registered against the land. The negotiations concerning right-of-way

agreements will involve three major issues: the nature of the rights that will be granted, the compensation payable for these rights, and provisions concerning liability and compensation for damages arising from the exercise of the rights granted.

These documents are most commonly used to legally secure rights-of-way for power lines and pipelines. They are specifically drawn up to enable and protect the company's operations and installations respectively and therefore could vary greatly. Furthermore, a sketch of plan of survey should be attached to the document.

Many clauses, in easements particularly, are very broadly written to cover things that might occur and therefore should be studied carefully. A contract should not be signed until the intent of each clause is understood. It may be desirable to contract a knowledgeable person to explain complex matters. Moreover, as the company has usually drawn up the easement, recognize that it has been drawn with its operation in mind. The landowner should negotiate clauses that apply to his circumstances and protect his interests. The preferred agreement for pipelines is the Alberta Right-of-Way Agreement; for power lines, the Alberta Utilities Right-of-Way Agreement.

The following are matters which form part of easement negotiations and cover areas that have frequently led to disagreement:

Additional Pipeline

Agreements typically contain clauses relating to the construction of additional pipelines. In other words, the Company does retain the right to place additional pipelines in the easement if the Agreement grants them that specific right. Almost without exception all existing easements, including the Alberta Right-of-Way Agreement, allow placement of additional pipelines in the easement. In the Alberta Right-of-Way Agreement the Company must pay the appraised difference in the land value of the area used or a minimum of \$50.00 per

acre. If this clause or any other clause is not agreeable to you, and you request that the easement be limited to one pipeline now or in the future, then the Agreement would have to be modified accordingly. This would mean the addition of a clause stating this, and should not consist only of removing the "s" of the end of pipelines. You should make it very clear that no additional pipelines will be allowed in the easement. In the Alberta Right-of-Way Agreement even though the Company must make an additional payment, the entry fee, referred to previous in this pamphlet, is not payable, whereon a Surface Rights Board order an additional pipeline in the easement area would be eligible for the entry fee though a nominal value would be placed on the second taking as it pertains to land value. As long as you are aware of the options and see that the Agreement is drawn up to reflect yours and the Company's wishes, additional pipelines should not pose a problem.

Liability Clause

It is important that the landowner be absolved of responsibility for damages, costs, claims, suits or actions arising out of the placement of pipelines.

Grantor's Rights

The rights of the landowner must be specified in an easement contract. Consideration in this regard should include right of access by the operator, the use of the land by the landowner, and the responsibility for construction of any special structures which permit continued use by the landowner.

Topsoil Conservation

The agreement should specify conditions for removal or non-removal of topsoil so as to leave the land as near as possible to its original condition following construction.

Above-surface Structures

Effective January 1, 1977 above-surface structures were placed under the jurisdiction of The Surface Rights Act and became subject in disputed cases to the right-of-entry process earlier described under surface leases. They also became subject to annual rental where warranted, which was not the case previously when these cases were dealt with under The Expropriation Act and all compensation was paid in a lump sum.

Annual compensation is based on points 3 and 4 described earlier under the heading Surface Leases — How to Determine Compensation: 3 being loss of production, and 4 severance and inconvenience. Pipelines do not qualify under The Surface Rights Act unless points 3 and 4 apply for above-ground structures (the loss of production and severance and inconvenience during construction being dealt with under a damage clause). Nothing in provincial or federal legislation disallows annual compensation on the pipeline itself and should this be agreed to, it will be binding. However, where there is no loss of production or severance or inconvenience, the practice has been no annual compensation, unless there are above-ground structures.

A clause should be inserted, however, to provide annual compensation or an additional lump sum payment in lieu of it in the event that above-ground structures are required in the future on the original or additional lines. This clause should also state how this sum will be determined.

Power lines definitely qualify under 4 and to a very small degree under 3, therefore it is necessary to have a clause providing annual compensation and a review of such compensation to account for changing land use and methods of farming. A landowner faced with above-ground structures has the option of either a lump sum or annual payment.

Arbitration

A clause should be included enabling both parties a means whereby

disputes can be settled without litigation: an example would be the amount of compensation for damages where the grantor and the grantee cannot agree. The matter at issue should be determined by three disinterested arbitrators, one to be appointed by the grantor, one by the grantee, and the third by the two arbitrators so appointed, and the decision of any two of three such arbitrators shall be final and conclusive. For a guideline this clause should refer to the provisions of the arbitration legislation in force in the Province of Alberta.

Damages

There should be a clause which states that the grantee shall pay compensation for any and all damages, where such damage occurs as a result of the operations of the grantee, its servants, agents or contractors.

Should any clauses which may be in the proposed contract not be clear to you, ask for clarification from the company, or if necessary, from your lawyer or other outside source.

The rate of compensation for rights granted to the company under a right-of-way agreement should reflect fairly the value of the land required for the right-of-way. Any damages created during construction are to be assessed through negotiations between the landowner and the company after completion and any disputes arising under the terms of a Surface Rights Board order, at the compensation hearing.

If the company refuses to pay for subsequent damages, the landowner has two options available to him. He can submit a claim in writing to the Surface Rights Board provided that the claim is made within two years of the last date on which the damage occurred and the claim is for \$5,000.00 or less or if the easement provides for an arbitration procedure, he may exercise his rights under the appropriate clause.

If the claim does not meet the above requirements and private negotia-

tions have not resolved the problem, the landowner must take legal action through the courts to collect damages.

Right of entry through Surface Rights Act if private negotiations fail

In the event that the company and the landowner are unable to privately negotiate an agreement as described above and if approval of the project has been granted by the ERCB (permit or licence), then the company uses the right-of-entry process to gain access and secures the lands by a right-of-entry order as described in the booklet Surface Rights in Alberta. The following is a brief overview of how to prepare for the Surface Rights Board hearing.

If private negotiations have failed, what, as a landowner, can you expect when appearing before the Surface Rights Board? At the time of making application to the Surface Rights Board by the operator (company), the operator shall pay to the respondent (owner), as part payment of the compensation payable, a sum of money equal to 80 per cent of the compensation offered in the last written offer to the occupant and filed with the application. The operator **shall not** exercise his right of entry until this 80 per cent as well as the total amount of the entry fee (page 6) has been paid. If you have any objections to the information in the application (Form A) or the Notice (Form B) you must bring your objections to the board within 14 days of the date of service to you by or on behalf of the board.

You have had input as to the well site location, roadway and other matters. (See page 2.) We will assume that location therefore is not a factor. A hearing will be held in your area, at a time selected by the board if there are no objections by the landowner or the company. Start your preparation immediately as a hearing may be held within 30 days from the date the right-of-entry is issued. If either party request it, an on-site inspection may be held prior to the hearing or shortly thereafter.

The hearing is informal, through proceedings usually are recorded on tape.

One must remember that the Surface Rights Board is a quasi-judicial board and as such can only make a decision based on the evidence. Therefore COME PREPARED. The board will accept oral evidence but written is preferred as this affords you the opportunity to re-examine it prior to submission. This also enables the board to more clearly understand your concerns. If you are having problems compiling your submission, you are entitled to obtain professional assistance where needed. This would refer to the assembling of your submission and associated cost, professional and non-professional, plus all costs associated with the failed private negotiations. Again the key here is "reasonable" and as such the Surface Rights Board will award all reasonable costs. **This does not mean that all costs will automatically be paid as submitted.**

The main points to include in your submission are the points outlined starting on page 6, as in most cases, what is valid for private agreements, in reality, is valid before the board.

In regard to market value one should try to obtain information about comparable sales in the area and if possible written evidence of those sales. Such information is usually available through your local realtor or land titles office. These sales should then be listed on a county map to show their proximity to your land. You can submit comparable well sites that have been negotiated privately between companies and others in your area, again showing them on a county map. It would be worthwhile to obtain from the landowner a copy of the agreement, if possible; otherwise such submissions may have limited value. Also if possible try to contact the vendor or purchaser of recent land sales to find out if there were any extenuating circumstances which may have had an impact on market value. In regard to general disturbance, it is a good idea to keep a record or log of the time and costs associated in the negotiation stage. These expenses will vary depending on the length of time you have spent on private negotiations and will include all expenses incurred to date in preparing your submission.

Your loss of use is based on previous farming practices and projected returns. If possible, attempt to have receipts available. The Surface Rights Board, unlike the practice usually followed for privately negotiated agreements, may subtract input expenses from this figure. Therefore try to have an idea of what your input expenses are and your net return.

Adverse effect depends on the location of the well site. In many cases you have already farmed around it prior to the hearing and so you should be in a position to assess the inconvenience factor. The use of a diagram to show how the structure interferes or how it, in addition to other obstructions, has a negative effect on your cropping practices will assist you in your explanation. This category is very difficult to determine and in many cases is subjective at best. However, one should have an idea, even if estimated, of how much more time will be required in attempting to farm around the installation. Damage to land has been considered a factor under the board's jurisdiction, however, under the Land Surface Conservation and Reclamation Act, it has become the responsibility of the Land Surface Reclamation Council when the well site, pipeline, or power line is abandoned to see that the land is properly reclaimed.

Any other factors that you wish to introduce at the hearing should be brought forward accompanied by relevant documentation.

Once the board has issued a compensation order, you can appeal it to the Court of the Queen's Bench within 30 days of its service upon you if you feel the decision or any part of it is incorrect. However, this should be done after consultation with your solicitor. The company also has this right and costs usually are the responsibility of the company if they appeal. If your appeal is successful, costs are payable by the company on a party and party basis to the party, if any, that the Court in its discretion may direct (in other words, each side is responsible for its own, or for the other side's as well, according to the judge's discretion).

A decision of the Queen's Bench can also be appealed into the Appellate

Division, however at that stage, one would be advised to proceed further only on the advice of a solicitor.

It is advisable to obtain a copy of the Surface Rights Act and read it prior to appearing before the Board. A copy is available through the Farmers' Advocate Office, Surface Rights Board or the Queen's Printer. One would also be advised to obtain copies of Board Orders within your area. If you are aware of any decisions and can acquire a decision number or the land location, copies are available for a nominal fee through the Surface Rights Board. If a hearing is planned in your area, you are allowed to sit in and observe the procedure. We would suggest both these things being done prior to your appearing before the board so as to familiarize yourself with their procedure.

For further information or assistance contact the Farmers' Advocate office at 427-2433, or the Surface Rights Board in Edmonton at 427-2444, or Calgary at 297-6467.

Information and pamphlets explaining the function and authority of the Energy Resources Conservation Board in relation to pipelines, power lines, or well sites are available by writing to the Energy Resources Conservation Board, 640 - 5th Avenue S.W., Calgary, Alberta, telephone 297-8311 or after hours 297-3417.

If farmers carefully study this booklet, they should be in a better position to successfully negotiate a satisfactory contract. Contracts for use on surface leases or easements and further information are available from the office of the Farmers' Advocate, 7000 - 113th Street, Edmonton, Alberta, telephone 427-2433, or your local district agriculturist.

GLOSSARY

Access — The right of ingress to and egress from a privately owned tract of land from a public way without trespassing on privately owned property.

Appurtenances — This usually refers to above-ground structures on pipelines.

Certificate of Title — A document based on a title search stating that the title or interest in property is vested in a designated person, and showing outstanding liens, charges or other encumbrances.

Covenants — An agreement written into deeds, grants or conveyances promising performance or non-performance of certain acts, or stipulating certain uses or non-uses of the property.

Demised Premises — That portion of the land that the lessor grants to the lessee.

ERCB — Energy Resources Conservation Board

Easement — A nonpossessing interest held by one person in the land of another whereby the first person is accorded partial use of such land for a specific purpose. Examples of easements are rights of ways for electric power or pipelines.

Egress — The right to leave a tract of land.

Encumbrance — Anything that affects or limits the fee simple title to property, such as mortgages, easements, liens, or restrictions of any kind.

Fee Simple — The greatest interest that one can hold in real property under our legal system.

Grantee — A person to whom a surface lease or easement is given, the company/operator.

Grantor — A person who grants a surface lease or easement, the landowner/farmer.

Indenture of Lease — The part of the lease that identifies both the lessor (farmer) and the lessee (the company) and their respective addresses, and the

legal description of land as it is registered in the Land Titles Office.

Ingress — The right to enter a tract of land.

Lessee — One who acquires the right to use the property of another from whom the lease is obtained, or one who rents property under a lease.

Lessor — One who rents real property to another or conveys or leases the right of the use of real estate to another.

Market Value — The highest price for which property can be sold in the open market by a willing seller to a willing purchaser.

Major Transmission Line —

1. For the purpose of section 30(2)(b) of the Act, "major power transmission line structures" means any structures which are part of a transmission line, as defined in the Hydro and Electric Energy Act, that
 - (a) transmits electric energy in bulk from generating plants to major substations, and
 - (b) is classified by the Energy Resources Conservation Board as a 69 Kilovolt transmission line or larger.
2. The Definition Regulation (Alta. Reg. 146/85) is repealed.

The following is added by the Farmers' Advocate Office as further clarification on the ERCB Definition of a Transmission Line.

TRANSMISSION LINE AS DEFINED IN THE HYDRO AND ELECTRIC ENERGY ACT IS AS FOLLOWS:

- (1) "transmission line" means a system or arrangement of lines of wire or other conductors and transformation equipment, wholly in Alberta, whereby electric energy, however produced, is transmitted in bulk, and includes
 - (i) transmission circuits composed of the conductors which form the minimum set required to so transmit electric energy,
 - (ii) insulating and supporting structures,

- (iii) substations,
 - (iv) operational and control devices, and
 - (v) all property of any kind used for the purpose of, or in connection with, or incidental to, the operation of the transmission line, but does not include a power plant or an electric distribution system.
- (2) The decision of the Board (Energy Resources Conservation Board) is final as to whether
- (a) a definition in subsection (1) is applicable in a particular case, or
 - (b) any line or system or installation is, or is part of, a power plant, a transmission line, industrial system or an electric distribution system.

Occupant — A person, other than the registered owner, who is in actual possession of the land or entitled to be in possession of the land.

Owner — The person in whose name a Certificate of Title has been issued pursuant to The Land Titles Act.

Right-of-Entry Order — An order of the Surface Rights Board granting to an operator the use of a certain area of the land surface for operations such as drilling for minerals, constructing roadways.

Right-of-Survey Entry — The right to pass across the lands of another, the land, property or interests therein, usually a strip acquired for survey purposes.

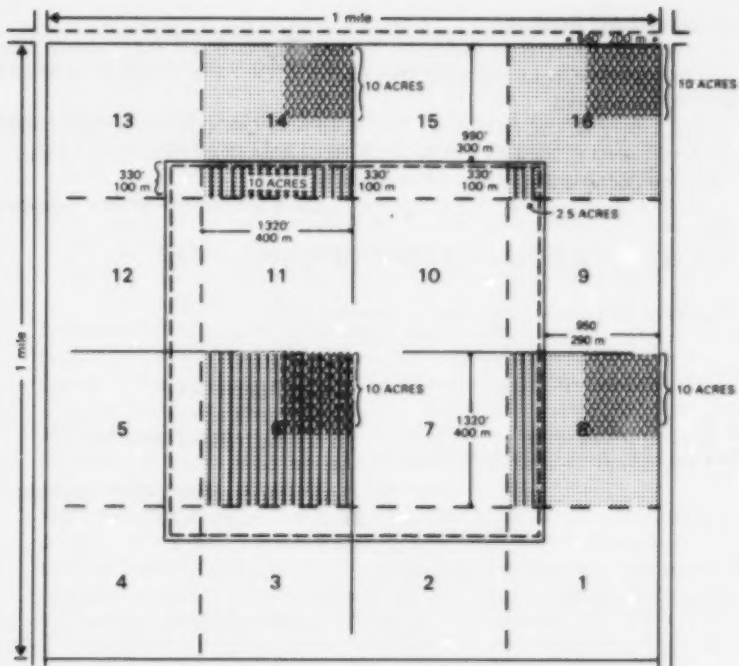
Surface Lease — Any agreement entered into by an owner or occupant with an operator under which the surface of the land may be used and which provides for the payment of compensation (rental or otherwise).

Recommended Reading

- SURFACE RIGHTS IN ALBERTA (Surface Rights Board Publication)
- TRANSMISSION LINES AND THE REGULATORY PROCESS IN ALBERTA (ERCB Publication)
- WELL-SITE SELECTION AND THE SURFACE OWNER (ERCB Publication)
- THE LAND CONSERVATION AND RECLAMATION COUNCIL (LCRC), a two-page document by Alberta Environment
- SURFACE RIGHTS ACT (through the Queen's Printer, or Farmers' Advocate Office)
- PIPELINES AND SURFACE RIGHTS (ERCB Publication)

Copies of this publication may be obtained from:

Print Media Branch
Alberta Agriculture
7000 - 113 Street
Edmonton, Alberta T6H 5T6
OR
Alberta Agriculture's district offices



Oil Target Area — One Quarter Section Spacing 40 acres



Primary One Quarter Section Target Areas 10 acres (Oil)



Primary One Section Target Area 10 acres (Gas)



Gas Target Area — One Section Spacing 250 acres



Common Oil and Gas Target Area